IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12533 of 2004

Between:

M/s.Karan Woosin Limited, A Company incorporated under the Companies Act, 1956, having its registered office at S.No.321, Kallakal, Gajwel Tq., Medak district, rep., by its Manager, Mr.N.C.Reddy.

..... PETITIONER

AND

The Assistant Provident Commissioner, (Authority under Section 14B of the Provident Fund Act, 1952) Sub-Accounts Office, Susheeram Complex, Patancheru-502 319

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus declaring the initiation of proceedings under Section 14B by issuance of show cause notice-cum-levy order No.AP/32431/PD/SAO/PTC/2004/176 dated 14-5-2004 and further conduct of the proceedings as an error apparent in law, vitiated by errors of law as to jurisdiction, arbitrary, illegal being contrary to Section 14-B of the E.P.F.Act and Para 32A of the EPF Scheme and violative of Article 14 of Constitution of India in the alternative declare para 32A of the EPF Scheme as Contrary to Sec.14B of the EPF Act.

Counsel for the Petitioner:MR.P.BALAJI VARMA

Counsel for the Respondent: MR.R.N.REDDY

The Court at the stage of admission made the following O R D E R:

This writ petition is filed aggrieved by the show cause notice-cum-levy order, dated 14-05-2004, wherein the respondent has called upon the petitioner to show cause as to why penal damages of Rs.10,18,558/- under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for short "the Act") and Rs.3,45,862/- towards penal interest at the rate of 12 per cent per annum under Section 7-Q of the Act read with Para 32A of the Employees' Provident Fund Scheme, 1952, Para 5 of the Employees' Pension Scheme, 1995 and Para 8A of the Employees' Deposit Linked Insurance Scheme, 1976, cannot be levied against the petitioner, for the delay caused by him in making the contributions from July, 1998 to February, 2004. Further it is stated in the said notice that if the petitioner desires of being heard, he may represent in person or through authorized representative before the respondent on 28-05-2004, at 11.00 a.m or he may make a written representation so as to reach the respondent before 28-05-2004.

Learned counsel for the petitioner contended that in similar circumstances, in the case of M/s Core Containers Limited, the respondent in his order dated 28-04-2004, observed that he is not competent either to waive or reduce damages already levied in the show cause notice. In the instant case also when the counsel for the petitioner approached the respondent on the date mentioned in the show cause notice-cum-levy order, the respondent expressed his inability to exercise the discretion either to waive or reduce damages already levied in the show cause notice, since he is not competent to do so. Hence, the learned counsel for the petitioner contended that it is a fit case to be entertained by this Court against the show cause notice. He further contended that the quantum of damages indicated in the show cause notice is bad in law as held by this Court in ***Organo Chemical Industries V.Union of India***, and in view of the same, the impugned show cause notice is liable to be set aside.

Learned Standing Counsel for the respondent contends that it is the discretion of the respondent to levy 100 per cent damages or only the damages that are prescribed under the scheme, but while exercising such discretion, it is always open for the

respondent to confine the damages as per the rate prescribed under the scheme.

Having regard to the facts and circumstances of the case, the impugned show cause notice to the extent of indicating the penal damages is set aside and the petitioner is at liberty to make a representation to the respondent, within a period of two weeks from today, raising all his objections. On receiving such a representation, the respondent shall consider the same and pass appropriate orders including that whether the petitioner is entitled for reduction of penal damages as prescribed under the statute or not, within a period of three weeks from the date of receipt of the said representation.

With the above observation, the writ petition is disposed of at the admission stage.

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20-07-2004

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To

1. The Assistant Provident Commissioner, (Authority under Section

14B of the Provident Fund Act, 1952) Sub-Accounts Office,

Susheeram Complex, Patancheru-502 319

2 Two C.D. copies